

(7)
No. 90-1102

Supreme Court U.S.
FILED

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OFFICE OF THE CLERK

IN THE
Supreme Court of the United States
OCTOBER TERM, 1990

ROBERT E. GIBSON,

Petitioner,

v.

THE FLORIDA BAR, *et al.*,

Respondents.

On Writ of Certiorari to the
United States Court of Appeals
for the Eleventh Circuit

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED JANUARY 10, 1991
CERTIORARI GRANTED MARCH 18, 1991

69

TABLE OF CONTENTS

	<i>Page</i>
Relevant Docket Entries (N.D. Fla.)	1
Relevant Docket Entries (11th Cir.)	6
Complaint (filed Mar. 27, 1984)	7
Answer (filed Apr. 12, 1984)	13
Motion for Leave to Amend Complaint (filed Aug. 3, 1984)	15
Pretrial Stipulation (filed Aug. 17, 1984) (Excerpts)	15
Order Granting Leave to Amend Complaint (filed Aug. 27, 1984)	16
Transcript of Non-Jury Trial Held Nov. 2, 1984 (filed Dec. 6, 1985) (Excerpt)	17
Plaintiff's Exhibits 6-7, "Official legislative positions of The Florida Bar" (admitted Nov. 2, 1984)	18
Plaintiff's Emergency Motion for Injunctive Relief (filed Sept. 23, 1986)	24
Response to Plaintiff's Emergency Motion for Preliminary Injunction (filed Sept. 29, 1986)	27
Judgment (11th Cir. Sept. 15, 1986) (issued as mandate Oct. 8, 1986)	27

TABLE OF CONTENTS (continued)

	<i>Page</i>
Motion for Judgment on Mandate (filed Nov. 19, 1986)	29
Response to Motion for Final Judgment (filed Dec. 4, 1986)	30
Legislative Positions Taken by the Florida Bar Governors (filed Mar. 12, 1987)	32
Transcript of Motion Hearing Held Mar. 12, 1987 (filed Mar. 30, 1987) (Excerpts)	35
Order Holding Case in Abeyance (filed Mar. 13, 1987)	39
Memorandum Re Status of Amendments to Bar Policy (filed Apr. 1, 1987)	40
Renewal of Motion for Preliminary Injunction; Response to Memorandum Re Status of Amendments to Bar Policy (filed Apr. 20, 1987)	41
Order Continuing Stay (filed May 7, 1987)	43
Renewal of Motion for Preliminary Injunction; Motion for Final Judgment (filed Oct. 22, 1987)	44
Defendants' Memorandum in Response to Plaintiff's Renewal of Motion for Preliminary Injunction & Motion for Final Judgment (filed Oct. 30, 1987)	46

TABLE OF CONTENTS (continued)

	<i>Page</i>
Order Further Continuing Stay (filed Nov. 10, 1987)	47
Florida Supreme Court Order (<i>Florida Bar Re Amendment to Rule 2-9.3</i> , 526 So. 2d 688 (Fla. 1988)) (filed June 2, 1988)	48
Notice of Filing & Affidavit of John F. Harkness, Jr. (filed Sept. 27, 1988)	50
Emergency Motion for Preliminary Injunction (filed Apr. 3, 1989)	58
Notice of Appeal (filed May 4, 1989)	60
Addendum to Answer Brief of Appellees (11th Cir., filed July 24, 1989) (Excerpt from <i>Florida Bar Journal</i> , "Financial Organization")	60
Judgment (11th Cir., July 23, 1990) (issued as mandate Oct. 19, 1990)	63

TABLE OF CONTENTS (continued)

	<i>Page</i>
ITEMS REPRODUCED IN APPENDICES TO THE PETITION FOR A WRIT OF CERTIORARI	
Pursuant to Supreme Court Rule 26.1, the following items which have already been reproduced in the appendices to the petition for a writ of certiorari are not reproduced again in this Joint Appendix:	
	<i>Petition Page</i>
Opinion of the United States Court of Appeals for the Eleventh Circuit (July 23, 1990)	1a
Final Order (N.D. Fla. May 3, 1989)	22a
Opinion of the United States Court of Appeals for the Eleventh Circuit (Sept. 15, 1986)	24a
Findings of Fact, Conclusions of Law, & Final Declaratory Judgment (N.D. Fla. Aug. 12, 1985)	35a
Order Denying Rehearing (11th Cir. Oct. 5, 1990)	43a

RELEVANT DOCKET ENTRIES

In the United States District Court for the Northern District of
Florida, Case No. TCA 84-7109

Date	Docket No.	Proceedings
3/27/1984	2	COMPLAINT for declative and inj. relief.
4/12/1984	6	ANSWER by defdts.
8/3/1984	13	MOTION for Leave to Amend.
8/17/1984	17	PRETRIAL STIP
8/27/1984	19	ORDER (mmp) Motion for Leave to Amen-GRANTED
11/2/1984	26	MINUTES of Non-Jury Trial
11/2/1984	27	LIST Exhibit, from NJ trial 11/2/84
8/12/1985	30	FF&CL and FINAL DECLAR- ATORY JUDGMENT (MMP) 1. Request for Injunctive Re- lief is DENIED. 2. The fore- going is issued as a Final De- claratory Judgment. 3. Costs awarded to defdt upon proper motion.
9/5/1985	31	NOTICE OF APPEAL filed by pltf.
12/6/1985	36	TRANSCRIPT of non-Jury Trial held 11/2/84

Date	Docket No.	Proceedings
9/23/1986	40	EMERGENCY MOTION Pltf's, for Injunctive Relief Pending Final Hearing and for Accelerated Disposition
9/29/1986	41	RESPONSE to Pltf's Emergency Motion for Preliminary Injunction
10/10/1986	42	MANDATE (ECCA) Judgment if the District Court is REVERSED and REMANDED to the District Court.
11/19/1986	43	MOTION for Judgment on Mandate by defdts.
11/19/1986	44	MEMO in support of #43
12/4/1986	46	RESPONSE to Motion for Final Judgment
12/16/1986	47	REPLY Memo, Defdt's, on Motion for Judgment on Mandate
2/26/1987	48	NOTICE of Hearing on Motion for Judgment * * * to be held 3/12/87
3/12/1987	51	MINUTES of Hearing on Motion for Judgment. Court declines to rule, holds matter in abeyance for 70 days.

Date	Docket No.	Proceedings
3/12/1987	52	EXHIBIT LIST from above hearing. Pltf. Ex. 1 & 2 attached to list, in file
3/13/1987	53	ORDER (MMP) Defts. motion for judgment on the mandate to be held in abeyance for 70 days to allow for action by the Supreme Ct. of FL on the Bar's proposal
3/30/1987	54	TRANSCRIPT of Motion Hearing held 3/12/87
4/1/1987	55	MEMO re: Status of Amendments to Bar Policy by defdt.
4/20/1987	56	RENEWAL of Motion for Preliminary Injunction; Response to Memo Re Status of Amendments to Bar Policy by Pltf.
5/7/1987	57	ORDER (MMP) In accordance with the representations made in defdts' notice and in order to insure final action by the Florida Supreme Court, the period during which this matter will be held in abeyance is hereby extended to 9/1/87.
10/22/1987	58	RENEWAL OF MOTION for Preliminary Injunction; Motion for Final Judgment

Date	Docket No.	Proceedings
10/30/1987	59	MEMO Defdt's in Response to Pltf's Renewal of Motion for Preliminary Injunction and Motion for Final Judgment
11/5/1987	60	MEMO Regarding Renewal of Motions, Pltf's
11/10/1987	61	ORDER (MP) court will continue to hold caus in abeyance pending order of Fla. Supreme Ct.; defdts to provide Court w/ copy of Fla. Sup. Ct. order re proposed bylaws within 5 days of its issuance court withholds ruling on pltf's renewed motion for PI (#58)
6/2/1988	62	NOTICE of filing Florida Supreme Court Order
9/16/1988	64	MINUTES of status conference - counsel to prepare order for Court's signature outlining time allowable to supplement record. Court will then rule without further argument.
9/27/1988	66	NOTICE of filing affidavit of John Harkness - Ref. to MMP
4/3/1989	68	EMERGENCY MOTION for preliminary injunction by pltf.

Date	Docket No.	Proceedings
4/4/1989	69	RESPONSE defdt's, to Emergency Motion for Preliminary Injunction
5/2/1989	72	MINUTES of Motion Hearing; Oral argument heard Order to follow
5/3/1989	73	FINAL ORDER (MMP) Pltf's motion for preliminary injunction is DENIED. As no subsequent proceedings are necessary in this case, this case is hereby DISMISSED. This court reserves jurisdiction to determine any appropriate costs to be awarded.
5/4/1989	74	NOTICE OF APPEAL by pltf. - filing fee paid

RELEVANT DOCKET ENTRIES

In the United States Court of Appeals for the Eleventh Circuit,
Case No. 89-3388

Date	Proceedings
5-10-89	Dup. Notice of Appeal and D.C. Docket Entries & Order
6-6-89	Record on Appeal — No. of Vols. 4(2P & 2T)
6-26-89	Brief for Appellant
6-26-89	Record Excerpts
7-24-89	Brief for Appellee
8-9-89	Reply Brief for Appellant
10-16-89	Case Argued
7-23-90	Opinion Rendered
7-23-90	Flg. & Entg. Judgment
8-13-90	Petition for Rehearing
10-5-90	Order Denying Rehearing
10-19-90	Jdgt. as Mdt. Issd. to Clerk

COMPLAINT
[R. 2, filed Mar. 27, 1984]

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

ROBERT E. GIBSON,

[Clerk's filing stamp
omitted in printing]

Plaintiff,

vs.

Case No.
TCA 84-7109 MMP

THE FLORIDA BAR, and the
Members of the BOARD OF
GOVERNORS, shown by
attachment,

Defendants.

COMPLAINT FOR DECLARATIVE AND
INJUNCTIVE RELIEF

COUNT I

This is an action for injunctive and declaratory relief arising under the First and Fourteenth Amendments of the United States Constitution and Disciplinary Rule 7-107G of the Code of Professional Responsibility, Florida Bar Journal, September 1983, Page 99, and 42 U.S.C. 1983.

II

This Court has jurisdiction under 42 U.S.C. Section 1983 and 28 U.S.C. 1343(3).

III

Plaintiff is a dues paying Member of The Florida Bar in good standing. Plaintiff is required by the Integration Rule of the Supreme Court of the State of Florida to pay dues to The Florida Bar as a predicate to the practice of law in the State of Florida. (Articles II and VIII of the Integration Rule.) Said Integration Rule is promulgated pursuant to the authority of the Florida State Constitution, Art. V.

IV

Plaintiff sought to intervene as a proponent of an initiative constitutional amendment to the Florida Constitution but was denied intervenor's status and has and is participating as amicus curiae in the case of Fine v. Firestone, Case No. 64,739 now pending in the Supreme Court of the State of Florida.

V

Plaintiff is a citizen, resident and elector of the State of Florida and a signer of the petition to place said initiative proposal on the ballot as provided by Article XI of the Florida Constitution.

VI

Defendant, The Florida Bar, is a body created by rule of the Florida Supreme Court which is a part of the judicial branch of the State of Florida. See Preamble to Integration Rule, Florida Bar Journal, September 1983 at Page 38. The Florida Bar and its governing body, the Board of Governors, were at all times material hereto acting under color of State laws and under State law when on approximately March 19, 1984, the President of The Florida Bar, speaking for the Board of Governors through the news media announced that The Florida Bar was opposed to the enactment of the initiative constitutional proposal commonly known as Proposition 1. Further, upon information and belief, The Florida Bar has announced that it will expend funds to

provide "information packages" regarding Proposition 1 to its members.

VII

Plaintiff and many other members of The Florida Bar in good standing support Proposition 1 and are deprived of their right of free speech under the First and Fourteenth Amendments of the United States Constitution by Defendant's actions when Plaintiff and other members of The Florida Bar who support Proposition 1 are forced to pay dues to The Florida Bar as a condition to earning a living through the practice of law and such dues are used for political purposes and promotion of ideological views adverse to theirs.

VIII

Defendant did not poll the membership because such a poll would reveal to the public the large number of Members who support Proposition 1.

IX

Plaintiff has no adequate remedy at law and injunctive and declaratory relief by this Court are the only methods whereby Plaintiff can avoid irreparable injury and avoid a continuation of the expression of political positions adverse to those of Plaintiff by Defendant organization which the State law requires that he be a member of and pay dues to as a condition of the practice of law.

X

Defendant espouses and makes known its view on many political positions and actively lobbies for the same and the costs of such activities are funded by the dues which its members are required to pay, under State law.

XI

Plaintiff will clearly prevail in this suit, the United States Supreme Court having held in the case of Abood v. Detroit Board of Education, 431 U.S. 209, 52 L.Ed.2d 261, 975 at 1782, that the use of union dues, which were a mandatory condition of employment, to support ideological views was a violation of the First Amendment rights of those members who opposed such views. In Arrow v. Dow, 544 F.Supp. 458 (D.N.M. 1981) the Court found that an integrated bar identical to that of The Florida Bar should be enjoined from expressing political and ideological views to which some of its members were opposed.

XII

Abstention is not appropriate in this case as the Florida Supreme Court has previously rejected the Federal holding in the above-mentioned case and others in the case of The Florida Bar - In re Amendment to Integration Rule of The Florida Bar, 439 So.2d 213 (Fla. 1983).

COUNT II

XIII

Plaintiff incorporates paragraphs I, II, III, IV, V, VI, VII, VIII, IX, X, XI, XII of Count I hereof.

XIV

Plaintiff's rights under the First and Fourteenth Amendments of association are impermissably infringed by the actions of the Defendant in that his right not to associate with those opposing Proposition 1 is denied under State law, by Defendant.

XV

The Defendant represents that its views are those of "The Florida Bar" and Plaintiff is forced by State law to be member

thereof. The public may therefore attribute falsely to Plaintiff Defendant's opinions on political and ideological matters which Plaintiff disagrees. Said conduct is in violation of Plaintiff's First and Fourteenth Amendment rights of free speech and association.

COUNT III

STATE PENDENTE CLAIM

XVI

The allegations of the preceeding paragraphs are adopted and this Court has pendant jurisdiction of these claims.

XVII

The Defendant deliberately accelerated their media released statement of opposition seven months before the election in a blatant attempt to influence its parent body, the Florida Supreme Court, which is presently considering a case in which Plaintiff is an amicus curiae and the legality of Proposition 1 is the subject matter.

XVIII

Such action by the Defendant was a violation of its own rule of professional ethics set forth in Disciplinary Rule 7-107G which prohibits the interference with the objective determination of legal matters by use of the media.

XIX

Such action by the Defendant is in violation of the Code of Judicial Conduct which has been adopted by the Florida Supreme Court. Canon 3, Section 6 of the Code of Judicial Conduct requires that Judges "abstain from public comment about a pending or impending proceeding in any Court, and should require similar abstention on the part of court personnel subject to his direction and control." Defendant, "The Florida Bar," is

such a person under the Court's control, and hence must obey the Code of Judicial Conduct.

XX

The Florida Constitution in recognition that the judicial branch is to follow the rule of law not of men gives special election status to the judiciary. The Defendant as an arm of the judiciary undertook to remove Plaintiff's opportunity for objective consideration of the case.

XXI

Plaintiff informed Bar counsel March 22, 1984 of his authorities and his intention to seek a preliminary injunction. Plaintiff has incurred the obligation to pay a reasonable attorney's fee.

WHEREFORE, Plaintiff prays as follows:

- a. That the Court hold a hearing by March 30, 1984 on a preliminary injunction and immediately thereafter issue such injunction preventing during the pendency of the cause the Defendant from further dissemination by minutes or otherwise of their views in opposition to Proposition 1.
- b. That the Court advance this matter on its docket and order a speedy hearing at the earliest practical date and cause this suit to be accelerated in every way.
- c. That this Court issue a permanent injunction restraining Defendant and their agents from expressing any view as The Florida Bar on the merits of Proposition 1.
- d. That this Court allow Plaintiff his costs herein including reasonable attorney's fees.
- e. That the Court grant all other relief to which Plaintiff appears to be entitled.

[Signature block, attached list of Board of Governors,
& verification omitted in printing]

—○—

ANSWER

[R. 6, filed Apr. 12, 1984]

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

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Defendants answer the Complaint as follows:

1. Admitted that the Complaint alleges an action for injunctive and declaratory relief arising under the First and Fourteenth Amendments of the United States Constitution. Otherwise, denied.
2. Admitted.
3. Admitted.
4. Admitted, except that the Supreme Court of Florida rendered its Opinion in the cited case on March 27, 1984.
5. Admitted.
6. Admitted, except denied that The Florida Bar has announced that it will expend funds to provide information packages.
7. Without knowledge as to whether Plaintiff and many other members of The Florida Bar in good standing supported Proposition 1. Otherwise, denied.
8. Admitted that Defendant did not poll the membership. Otherwise, denied.

9. Denied.

10. Admitted that Defendant espouses and makes known its view on legislation determined by the Board of Governors to be related to the purposes of The Florida Bar as set forth in the Integration Rule of The Florida Bar pursuant to procedures established by the Board of Governors. Admitted that a percentage of the income of The Florida Bar comes from dues, that such money is commingled with funds received from other sources, and that a percentage of such funds is used in connection with the Defendants' positions on legislative matters as noted above. Otherwise, denied.

11. Denied that Plaintiff will prevail in this suit.

12. Admitted that abstention is not appropriate in this case.

13. Responses to paragraphs 1 through 12 are realleged.

14. Denied.

15. Admitted that Defendant represents that its view are those of The Florida Bar and admitted that Plaintiff is required by State law to be a member of The Florida Bar in order to practice law in the State of Florida. Otherwise, denied.

16. Admitted.

17. Denied.

18. Denied.

19. Denied.

20. Denied that the Defendant undertook to remove Plaintiff's opportunity for objective consideration.

21. Without knowledge as to whether Plaintiff has incurred an obligation to pay an attorneys' fee. Otherwise, admitted.

[Signature block & proof of service
omitted in printing]

MOTION FOR LEAVE TO AMEND COMPLAINT
[R. 13, filed Aug. 3, 1984]

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

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Comes now Plaintiff and moves to amend the Complaint in this cause so as to allege the following as the basis for jurisdiction and states that justice will best be served by permitting amendment in the following manner to broaden the jurisdictional statement.

1. This is an action for injunctive and declaratory relief and the Court has jurisdiction under 28 U.S.C. 1331, 28 U.S.C. 1343(3) and (4), 42 U.S.C. 1983, 28 U.S.C. 2201 and the provisions of the First and Fourteenth Amendments of the U.S. Constitution.

• • • •

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PRETRIAL STIPULATION
[R. 17, filed Aug. 17, 1984]

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE, FLORIDA

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**A.
BASIS OF FEDERAL JURISDICTION**

42 U.S.C., § 1983; 28 U.S.C., § 1343; 42 U.S.C., § 1331; 28 U.S.C., § 2201.

• • • •

**F.
ADMITTED FACTS**

Defendant admits:

1. Plaintiff is a member of The Florida Bar in good standing.
2. Some members of The Florida Bar disagree with some positions taken by the The Board of Governors of The Florida Bar on which Bar dues are used for the purpose of lobbying.

• • • •

[Signature blocks omitted in printing]

—◇—

**ORDER GRANTING LEAVE TO AMEND COMPLAINT
[R. 19, filed Aug. 27, 1984]**

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

[Title omitted in printing]

REFERRAL AND ORDER

Referred to Judge Paul on 8/46/84
Type of Motion/~~Pleading~~ Motion for Leave to Amend
(x) Filed by Plaintiff on 8/3/84 Doc. No. 13

• • • •

[Clerk's signature omitted in printing]

ORDER OF COURT

On the foregoing it is ORDERED this 27th day of August
1984:

The Relief Requested is Granted
(x) by this order.
() by separate order.

/s/ Maurice M. Paul
UNITED STATES DISTRICT JUDGE

[Clerk's record of notice to counsel
& filing stamp omitted in printing]

—◇—

**TRANSCRIPT OF NON-JURY TRIAL
ADMISSION OF EXHIBITS
[Nov. 2, 1984]**

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA

[Title & appearances omitted in printing]

* * * *

[16] MR. MAHORN: Your Honor, we would like to move into evidence all of our exhibits. Both the exhibits for Plaintiff and the exhibits for Defendants have been stipulated to without exception.

MR. RICHARD: No objection.

THE COURT: Mark them in, please, ma'am.

(Whereupon, all stipulated exhibits for the Plaintiff and the Defendants were received into evidence.)

* * * *



EXCERPT FROM PLAINTIFF'S TRIAL EXHIBITS 6 & 7
THE FLORIDA BAR NEWS, APR. 15, 1984, PAGE 3
[Offered & admitted Nov. 2, 1984]

The Florida Bar News/April 15, 1984—3

Official legislative positions of The Florida Bar

The following is the official 1984 legislative program of The Florida Bar adopted by the Board of Governors, as reported by staff Legislative Counsel Rayford H. Taylor:

Priority Legislation

Support

1. The January 1984 recommendations of the Tort Litigation Review Commission, regarding changes in tort litigation law, which include:

- Repeal of Florida Statute 768.56, an act requiring an attorney's fee award to the prevailing party in a medical malpractice action.

- Section 909, Restatement of Torts, Second, be enacted as a statute governing vicarious liability for punitive damages.

- Procedural change to require a court order before a party may seek punitive damages. The complainant must make a prima facie case before he can amend his complaint for punitive damages.

- No limit should be imposed on non-economic damages in tort litigation.

- A mandatory periodic payment of judgments statute should not be adopted. The Florida Bar should continue to study the advisability of such a statute.

- Further review of Chapter 95, Florida Statutes, concerning limitation of actions, with specific attention to §95.11(4) dealing with professional malpractice.

- Present rules regarding bifurcation of trial should not be altered and should remain within the discretion of the trial judge.

- The present summary judgment process should not be altered. There should be an additional procedure established by which the party with the burden of proof as to any material issue of fact may be required to demonstrate, prior to trial, there is plausible evidence by which that burden will be carried at the time of trial.

- No ceiling or schedule should be established with regard to the contingent fees of attorneys.

- The present law with respect to expert witness testimony should not be changed.

- The current statute regarding remittitur and additur should be made applicable to all tort actions and amended to delete the requirement that any judgment must be shown to be "clearly" excessive or inadequate as a condition for the trial court to exercise the appropriate power.

- There is no need to change the current law in Florida regarding comparative negligence. Therefore, the concept of joint and several liability should be retained.

- Adoption of an offer of settlement rule or statute modeled along that presently proposed for the Federal Rules.

2. In concept, with several qualifications, the report of the Article V Review Commission recommending changes in Article V of the Florida Constitution relating to the judiciary. The Board of Governors opposed in principle, the recommendations concerning merit retention and selection of trial judges, the opening of deliberations of the judicial nominating commissions, and the modification of the Florida Supreme Court's jurisdiction by the legislature. The Bar's positions on the commission's recommendations were:

- *Recommendation 1*—Eligibility requirement for county court judges increased to provide that county judges be members of The Florida Bar for five years, and circuit court judges be members of The Florida Bar for ten years. Approved.

- *Recommendation 2*—Entire judicial system be under merit selection and merit retention process, and that the system be implemented for all trial court judges. Oppose.

- *Recommendation 3*—All vacancies for trial court judgeships be filled through the nominating commission selection process and that the Governor be allowed to start the selection process to fill the vacancies created by resignation as soon as a resignation has been accepted. Approved. It was recommended by the Board of Governors to advise the commission of a variety of problems regarding the definition of the term "vacancy."

- *Recommendation 4*—The legislature and the Supreme Court should push for dispute resolution pilot programs in (a) arbitration for appropriate civil actions, (b) mediation of domestic relation disputes, especially custody issues, and (c) pretrial diversion programs in criminal jurisdiction. Approved unanimously.

- *Recommendation 5*—Sufficient state funding should be provided to relieve local governments of appropriate portions of court funding now being financed principally by the counties. Approved unanimously.

- *Recommendation 6*—There is no justification for a return to a municipal court system; the problems can be solved within the present structure. Approved unanimously.

- *Recommendation 7*—No consolidation of the county and circuit courts into a single-tier court system. Approved unanimously.

- *Recommendation 8*—Removal of appellate district residency requirements for Supreme Court justices. No position taken.

- *Recommendation 9*—Regarding an alternative method for modification of the Supreme Court's jurisdiction by the court and the legislature. Oppose unanimously.

- *Recommendation 10*—Article V, Section 3(b)(5) be amended to allow any district court to "pass through," by certification to the Supreme Court, any "proceeding" pending before that court. Approved unanimously.

- *Recommendation 11*—Florida Rule of Appellate Procedure 9.331 should be amended by the Supreme Court to broaden the *en banc* proceedings to allow the district courts of appeal to order hearing or rehearing *en banc* to resolve questions of exceptional importance. This authority would be in addition to the present authority of the district courts to resolve conflict decisions to maintain uniformity within each district as that proscribed in Rule 9.331. Approved unanimously.

- *Recommendation 12*—Recommended legislation which would allow the district courts of appeal to review any county court decisions when certified to the district court by a county court judge. Approved.

- *Recommendation 13*—There is no need to amend the Constitution to authorize the establishment of specialized courts. Approved unanimously.

- *Recommendation 14*—Requiring uniform rules and opening up of the proceedings of the judicial nominating commissions. Oppose. However, the Bar will support PCB 38 before the House Judiciary Committee if the Bar cannot prevail on the position of leaving the JNCs as currently constituted.

- *Recommendation 15*—Recommend the constitution provide for an advisory judicial compensation commission. Approved unanimously.

- *Recommendation 16*—Elimination of all obsolete provisions in the schedule of Article V. Approved. Exception noted where elimination of obsolete provisions would be substantive law amendments.

• *Recommendation 17*—Recommend there be no change in the provision requiring retirement of active judges at age 70. Approved unanimously.

• *Recommendation 18*—No change relating to the Judicial Qualifications Commission. No position. The Board recommends further study on this issue.

• *Recommendation 19*—Recommend there be no change concerning Supreme Court supervision of Bar discipline and admissions. Approved unanimously.

• *Recommendation 20*—Recommend there be no change in the constitution concerning the office of the clerk of the circuit court. Approved unanimously.

• *Recommendation 21*—Recommend there be no constitutional change by which workers' compensation issues or deputy commissioners would be integrated into Article V. Approved unanimously.

• *Recommendation 22*—Recommend the right to counsel in civil proceedings be addressed by a more appropriate body. Approved unanimously.

• *Recommendation 23*—Recommend that Section 43.29(2) Florida Statutes (1981) be amended to provide that persons who serve on judicial nominating commissions be eligible for state judicial office when such office is filled by a nominating commission other than the one on which such person served. Adopted unanimously.

• *Recommendation 24*—Recommend no change be made with regard to the Supreme Court's rulemaking power under Article V, Section 2(a). Approved unanimously.

Oppose

1. Any proposal which would:

• Amend Article V of the Florida Constitution to remove the Supreme Court's authority over the admission and discipline of lawyers.

• Allow nonlawyers to serve on the Florida Supreme Court.

• Remove merit retention for appellate judges.

2. Legislation reforming the medical malpractice system consistent with proposals made by the FMA and its "Reason '83" program.

3. Legislation recreating medical malpractice review panels and establishing such panels for all other professions.

4. Legislation mandating structured payouts of all verdicts in medical malpractice cases.

5. Legislation establishing uniform circuit and county court filing fees and service charges or permitting county commissions to allocate up to 20 percent of those fees to fund a law library, legal aid program, family mediation or conciliation service or maintenance of court facilities.

6. Repeal of the current sales tax exemptions on attorneys' fees.

Legislation

Support

1. SB 28 by Senator Fox and HB 27 by Representative Simon modifying Florida's long arm statute to correct technical defects in the statute and broaden the public's access to Florida courts.

2. The judiciary getting at least the same pay increase during the biennium as that in the Governor's budget for other state workers.

3. An increase in the district court of appeals and Florida Supreme Court's filing fees from the present \$50 to an amount not to exceed \$150.

4. SB 10 by Senator Johnston to decrease the fees charged by circuit court clerks for preparing records on appeal. Prior to the 1982 session, the charge was \$1 per document. In 1982 it was changed to 50¢ per page. During the 1983 session, the Bar supported a decrease to a reasonable charge for preparing records on appeal since 50¢ a page makes the cost of preparing records too costly.

5. SB 530 by Senator Castor and HB 892 by Representative Mills and others, appointing a legislative study commission to investigate the benefits of creating a state legal services corporation funded totally by the State of Florida. In 1983, the Bar supported legislation to create the Florida Law Foundation to receive federal block grant and other monies for legal services in Florida.

6. SB 230 by Senator Childers and HB 399 by the HRS Committee reenacting the current law which requires the licensure of residential child care facilities in Florida.

7. SB 107 by Senator Dunn regarding mediation of disputes between citizens and authorizing the establishment of Citizen Dispute Settlement Centers.

8. HB 349 by Judiciary and SB 290 by Senator Castor, raising the pay of retired judges on active duty from the current \$100 per day to \$233 per day.

9. The certification by the Supreme Court of 33 additional judges in the state court system.

Oppose

1. Any effort to amend Article V of the Constitution which is inconsistent with those items which the Bar has established priority support for this session.

2. Legislation to amend Article V to return to the Supreme Court's jurisdiction to that of 1980.

3. Legislation to repeal the provision which prohibits justices or judges from serving after attaining the age of 70 years.

4. Legislation to amend Article V to authorize cities with populations in excess of 50,000 to establish municipal courts.

5. Legislation providing the clerk of the Florida Supreme Court, rather than the Governor, will issue warrants directing executions.

[continuation of another article
omitted in printing]

**PLAINTIFF'S EMERGENCY MOTION FOR
INJUNCTIVE RELIEF PENDING FINAL
HEARING, AND FOR ACCELERATED DISPOSITION
[R. 40, filed Sept. 23, 1986]**

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

[Title omitted in printing]

I. MOTION:

1. On Sept. 15, 1986, the United States Court of Appeals for the Eleventh Circuit entered an opinion and a judgment thereon, reversing this Court's final judgment. A copy of the slip opinion is attached. Although time remains for re-hearing to be requested, or for certiorari to be sought to the United States Supreme Court, at the present time it is clear that Plaintiff will prevail (and has already prevailed.)

2. For the reasons stated in the Memorandum of law set forth below, Plaintiff moves for the immediate entry of an injunction restraining the Members of the Board of Governors of the Florida Bar, ("referred to as the 'bar'") from expenditure of Plaintiff's bar dues for lobbying and other ideological activity beyond that expressly authorized by the Opinion rendered by the United States Court of Appeals for the Eleventh Circuit.

3. In addition, for the reasons stated below, Plaintiff also moves that a procedure be implemented, immediately pending final hearing, granting the procedural rights guaranteed to Plaintiff in the most recent and compelling authority on the law of compulsory use of dues for lobbying or other ideological activity, Chicago Teachers Union v. Hudson, ___ U.S. ___, 106 S. Ct. 1066 (1986) further described in the memorandum of law below.

II. MEMORANDUM OF LAW:

4. This case is before the Court in an unusual posture. The Court of Appeals has entered an Opinion (attached hereto) establishing that:

certain positions taken by the Bar are not sufficiently germane to its administration of justice function to justify the expenditure of mandatory dues. Gibson v. Florida Bar, No.

85-3711, Slip Op., at 5168, (11th. Cir., Sept. 15, 1986).

The Court on page 5174 of the Slip Opinion establishes the limits upon the Florida Bar's lobbying/ideological activity to "include":

- (1) Questions concerning the regulation of attorneys.
- (2) Budget appropriations for the judiciary and legal aid.
- (3) proposed changes in litigation procedures
- (4) regulation of attorney's client trust accounts and
- (5) law school and bar admission standards

The Court of Appeals also listed certain positions espoused by the Defendant, Bar, on footnote 1, page 5169. These positions do not meet the areas described in the opinion as acceptable, above. The Court of Appeals has remanded this cause to this Court to determine if the actual positions taken by the Bar are within the First Amendment limits to the Bar's right to advocate with compelled dues funding. The Bar will have the burden of proving that their expenditures are within the constitutional limits. The present status of this matter may be analogized to the entry of a final (and appealed) Summary Judgment setting forth the law and the fact of liability of the Defendant, but, leaving the issues of the extent of liability to the Defendant, remedy and ancillary matters to further consideration.

* * * *

* * * Thus Plaintiff has appropriately (and with finality) established that his First Amendment rights are implicated by the Florida Bar's Legislative program and lobbying/ideological activity in general. Thus plaintiff will suffer injury which cannot be rectified by a later monetary recovery. A "rebate" of "dues" (or Bar fees) used for ideological purposes is inadequate to remedy the constitutional rights implicated. Chicago Teachers v. Hudson, ___ U.S. ___, 106 S. Ct. 1066 at 1074. * * * A money judgment, although clearly required, is as a matter of law inadequate to vindicate Mr. Gibson's constitutional rights.

* * * *

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**RESPONSE TO PLAINTIFF'S EMERGENCY
MOTION FOR PRELIMINARY INJUNCTION
[R. 41, filed Sept. 29, 1986]**

IN THE UNITED STATES DISTRICT COURT OF THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

[Title omitted in printing]

Defendant, The Florida Bar Board of Governors, opposes Plaintiff's emergency motion for preliminary injunction on the grounds stated below.

* * * *

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**FIRST JUDGMENT OF THE
COURT OF APPEALS
[Sept. 15, 1986]**

United States Court of Appeals

FOR THE ELEVENTH CIRCUIT

No. 85-3711

D.C. Docket No. 84-7109-11

ROBERT E. GIBSON,

Plaintiff-Appellant,

versus

THE FLORIDA BAR and Members
of the BOARD OF GOVERNORS,

Defendants-Appellees.

Appeal from the United States District Court for the
Northern District of Florida

Before HILL, Circuit Judge, HENDERSON*, Senior Circuit
Judge, and LYNNE**, Senior District Judge.

J U D G M E N T

This cause came on to be heard on the transcript of the
record from the United States District Court for the Northern
District of Florida, and was argued by counsel;

ON CONSIDERATION WHEREOF, it is now here ordered
and adjudged by this Court that the judgment of the said District
Court in this cause be and the same is hereby, REVERSED; and
that this cause be and the same is hereby, REMANDED to said
District Court for further proceedings in accordance with the
opinion of this Court;

It is further ordered that defendants-appellees pay to
plaintiff-appellant, the costs on appeal to be taxed by the Clerk
of this Court.

*See Rule 3(b), Rules of the U. S. Court of Appeals for the
Eleventh Circuit.

**Honorable Seybourn H. Lynne, Senior U. S. District Judge for
the Northern District of Alabama, sitting by designation.

Entered: September 15, 1986
For the Court: Miguel J. Cortez, Clerk

By: /s/ Warren A. Godfrey
Deputy Clerk

ISSUED AS MANDATE: OCT 08 1986

MOTION FOR JUDGMENT ON THE MANDATE
[R. 43, filed Nov. 19, 1986]

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

[Title & Clerk's filing stamp
omitted in printing]

Defendants, The Florida Bar and Members of the Board of
Governors of The Florida Bar, move for entry of a judgment on
the mandate issued by the United States Court of Appeals for the
Eleventh Circuit and received and filed by this Court on October
10, 1986. As grounds therefore, Defendants state:

1. In the opinion of the Eleventh Circuit reversing the
original judgment entered by this Court, the case was remanded
for further proceedings.

2. After this Court rendered its judgment and before the
Eleventh Circuit issued its opinion, the United States Supreme
Court rendered its opinion in the case of Chicago Teachers

Union v. Hudson, 476 U.S. ___, 106 S.Ct. 1066, 89 L.Ed.2d 232 (1986), in which it announced certain procedural requirements as a constitutional prerequisite to the use of compulsory union dues for lobbying activities.

3. At its meeting on November 15, 1986, the Board of Governors of The Florida Bar adopted a new procedure for the use of compulsory bar dues for lobbying activities. The procedure is set out in the affidavit of Rayford H. Taylor attached to this motion. The new procedure fully complies with the requirements announced in the opinions of the Eleventh Circuit in this action and the Supreme Court in the Chicago Teachers case.

WHEREFORE, Defendants move for a judgment finding the newly adopted procedure of The Florida Bar to be in compliance with the First Amendment rights of the Plaintiff as construed by the United States Supreme Court and the United States Court of Appeals for the Eleventh Circuit.

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RESPONSE TO MOTION FOR FINAL JUDGMENT
[R. 46, filed Dec. 4, 1986]

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

[Title omitted in printing]

THE PLAINTIFF, ROBERT E. GIBSON, by counsel,
respectfully represents:

• • • •

2. The BAR's position is faulty and the procedure advocated by the BAR falls far short of meeting the legal requirements set forth in Chicago Teachers Union vs. Hudson, -U.S., -106 S.Ct. 1066 (1986).

3. For the reasons set forth in the memorandum of law, this Court should enter an injunction requiring adherence to the legal requirements set forth in the Eleventh Circuit's opinion as well as that of the U.S. Supreme Court in Chicago Teachers. Plaintiff respectfully notes it has pending an Emergency Motion for interim relief.

• • • •

**8. THE SETTLEMENT PROPOSAL DOES NOT
ADDRESS DAMAGES, COSTS AND COUNSEL FEES.**

The BAR's Motion fails to address other issues needed to be resolved on a "final judgment", (MR. GIBSON maintains that it is necessary for the Court to receive further evidence before ruling.), particularly damages for past improper uses of GIBSON's funds. In addition, MR. GIBSON is entitled to attorney's fees for the services of his counsel herein.

9. CONCLUSION

It is respectfully submitted that the Motion for Judgment filed by the BAR be denied.

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**LEGISLATIVE POSITIONS TAKEN
BY THE FLORIDA BAR BOARD OF GOVERNORS
[R. 52, filed Mar. 12, 1987]**

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE, FLORIDA**

[Title omitted in printing]

The Plaintiff, ROBERT E. GIBSON, presents a partial listing of legislative positions taken by the FLORIDA BAR, derived from The Florida Bar News, the official publications of the Bar,

1985:

February 15, 1985: "The Bar last year opposed the Florida Medical Association's Campaign to pass constitutional amendments abolishing joint and several liability." See Exhibit 1.

May 15, 1985, the Governors voted to oppose House Bill 1352 regarding medical malpractice. See Exhibit 2.

December 1, 1985, The Governors voted to support expansion of the "Florida Equal Access to Justice Act" to cover individual citizens voted to support the revision of F.S. 945.10 to allow lawyer's access to pre and post sentence investigation reports; to support a bill requiring county and municipal detention facilities to report certain incidents to the Department of Corrections and to seek a limit of 75-80 probationers per supervisor, and a funding method therefor. See Exhibit 3.

February 1, 1986, The Governors agreed on January 9 and 10 to support:

(a) a change in state law to forbid judges to override jury recommendations of mercy in capital cases (approved 21-7).

(b) a measure requiring all trial judges to be appointed (Circuit and County Judges are presently elected).

(c) increased jury compensation.

(d) drawing jurors from driver's licenses' lists (they are now drawn from voter's registrations).

(e) allowing either spouse to file for divorce in Florida if one spouse resided in Florida for six (6) months (current law now only allows the resident spouse to file).

(f) a "public guardianship" bill.

(g) lobbying for expanded recognition of unmaturred and contingent claims in probate.

(h) to allow land trusts to receive homestead exemptions.

(i) to allow unincorporated church trustees to sell land.

(j) establishing mortgages held by married couples to be held as tenants by the entireties.

(k) creating a state "division of tax policy."

(l) barring tax collectors to enforce anything except good faith payments on disputed taxes.

To oppose:

(a) a change from the "American Rule" to provide that a losing party pay the prevailing party's legal fees.

(b) "federal products liability legislation" pending in Congress. See Exhibit 4.

March 1, 1986: (Page 1). The News reports that the Florida Bar Governors oppose any change in joint and several liability. See Exhibit 5.

April 1, 1986: (Page 1). The 1986 legislative goals were stated:

- (a) "Compromise" on the Marketable Record Title Act.
- (b) Opposing a sales tax on legal fees.
- (c) Opposing any "substantial" change in the tort system.
- (d) Supporting "insurance reform."
- (e) Opposed four federal "money laundering" bills.
- (f) Continuing the state prison, "PRIDE" Industry Program.
- (g) Supporting legislation protecting "whistle blowers" in the public sector.
- (h) Approved Insurance Commissioner Guter's insurance reforms.
- (i) Approved the Alternative Dispute Resolution Committee proposal for a pilot program of alternative dispute resolution.
- (j) Opposed changes in the insanity defense.
- (k) Opposed a bill making it a "major crime" (sic) to return a child more than Twelve(12) hours late from court approved visitation.

Other positions previously set out were restated. See Exhibit 6.

June 1, 1986: Voted to allow an "Executive Committee" to take immediate action on "tort reform", and to "negotiate." See Exhibit 7.

July 1, 1986: "Espoused the position that tort reform should be linked to insurance rate rollback. See Exhibit 8.

October 1, 1986: The Board of Governors voted to oppose repeal of a sales tax exemption for attorney's fees. See Exhibit 9.

[Signature block, proof of service, &
Exhibits omitted in printing]

TRANSCRIPT OF MOTION HEARING
Mar. 12, 1987
[R. 54, filed Mar. 30, 1987]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA

[Title, appearances, & Clerk's filing
stamp omitted in printing]

* * * *

[7] MR. KRAFT: GOOD AFTERNOON, YOUR HONOR.
HERB KRAFT FROM TALLAHASSEE.

* * * *

IN THE INTERIM, MR. GIBSON'S FIRST AMENDMENT RIGHTS HAVE BEEN ESTABLISHED BY THE DECISION, AND WHICH ARE IN THE NATURE OF AN IRREPARABLE HARM, ARE STILL CONTINUING TO BE HARMED.

I BELIEVE THAT THE ELEVENTH CIRCUIT HAS MADE IT CLEAR THAT, FIRST OF ALL, THE COURT MUST DETERMINE IF THE POSITIONS TAKEN BY THE BAR IN THE PAST, AND I BELIEVE THAT INCLUDES THROUGH TODAY'S DATE, WHETHER OR NOT THESE WERE WITHIN THE LIMITED AREA WHICH THEY DESCRIBE IN A FOOTNOTE IN THEIR [8]OPINION AS QUESTIONS CONCERNING THE REGULATION OF ATTORNEYS, BUDGET APPROPRIATIONS FROM THE JUDICIAL AND LEGAL AID, PROPOSED CHANGES IN LITIGATION PROCEDURES, CLIENTS' TRUST ACCOUNTS, REGULATION OF LAW SCHOOL AND BAR ADMISSION.

AND THEN, FROM THERE, RULE WHETHER OR NOT THOSE POSITIONS WERE WITHIN THIS; AND THEN DETERMINE IF THE PROCEDURES FOLLOW THE WORD WITHIN THE LAW.

AND AT THIS POINT, ISSUE A JUDGMENT AND DECLARATION PLAINTIFF GIBSON'S RIGHTS UNDER IT AND AN INJUNCTION TO REQUIRE THE BAR TO STOP UNTIL SOME SORT OF PROCEDURE IS ADOPTED, WHICH WILL MEET THE CONSTITUTIONAL STANDARDS WHICH WERE SET OUT BUT WERE CLARIFIED IN CHICAGO TEACHERS.

YOUR HONOR, WE HAVE PROPOSED FROM THE OFFICIAL BAR PUBLICATION, FLORIDA BAR NEWS, A RESUME OF SOME OF THE POSITIONS WHICH HAVE BEEN TAKEN BY THE BAR.

WE DON'T KNOW WHAT POSITIONS WERE TAKEN BY THE BAR, BECAUSE UP TO THIS DATE, NO COMPREHENSIVE LISTING HAS EVER BEEN SENT TO MR. GIBSON OR MEMBERS IN GENERAL.

AND IN REVIEWING WHAT I HAVE MARKED AS PLAINTIFF'S EXHIBIT 1, IN WHICH I WOULD MOVE

INTO EVIDENCE, ONE NOTES THAT THE BAR HAS STRAYED FAR AFIELD IN THE AREAS THAT WERE HELD TO BE LEGITIMATE AND APPROPRIATE.

AND THE COURT CAN, IN REVIEWING THAT, DETERMINE — AND THIS IS THE POINT IN WHICH THE BAR HAS THE BURDEN OF PROOF, THAT ALL THE POSITIONS WHICH WE HAVE LISTED IN THE EXHIBITS [9] WILL BE ON THE SCOPE OF WHAT THEY WERE ALLOWED TO USE MR. GIBSON'S DUES FOR.

IN ADDITION, IN — AGAIN, THE OFFICIAL PUBLICATION, FLORIDA BAR NEWS — THE BAR HAS STATED THE AMOUNT WHICH IS BEING SPENT AS \$10 A YEAR PER MEMBER. BUT I ALSO MOVE THAT INTO EVIDENCE.

* * * *

[11] THIS BRINGS HOW WE ARE TO FURTHER PROCEED INTO QUESTION.

THE BAR HAS THE BURDEN OF PROOF AND HAS, TO THIS POINT, DELIVERED NOTHING TO THE COURT, EITHER ON THE POSITION IT HAS TAKEN RECENTLY, NOR IN THE PAST THAT WOULD SHOW THAT THESE WERE WITHIN THE LIMITS THAT WERE PLACED IN THE ELEVENTH CIRCUIT DECISION.

THUS, I THINK THERE IS NO CHOICE BUT TO TAKE IT THAT THESE POSITIONS WILL ALL NOT BE IN THE AREA AND FASHION A REMEDY THAT WILL INCLUDE RESTITUTION OF MONEYS TAKEN FROM MR. GIBSON UNLAWFULLY IN THE PAST.

THE COURT: HOW MUCH DO YOU THINK THAT IS?

MR. KRAFT: YOUR HONOR, THE ELEVENTH CIRCUIT MENTIONED THAT THE EVIDENCE SHOWED \$1.50 HAD BEEN TAKEN PER YEAR, AND WE HAVE PRESENTED IN EXHIBIT NUMBER 2, AT THIS TIME, INDICATION FOR MR. TAYLOR, THE FORMER LEGISLATIVE COUNSEL, THAT IS NOW \$10 A YEAR. YOU THEN HAVE INTEREST UPON IT. THE PROBLEM IS NONE OF THIS RESULTS FROM AUDITED FINANCIAL STATEMENTS.

THE COURT: I AM ASKING YOU, YOU ARE HIS LAWYER, HOW MUCH DO YOU THINK HAS BEEN WITHHELD FROM MR. GIBSON? GIVE ME YOUR OPINION? ANY DATE YOU WANT TO PICK.

MR. KRAFT: GOING BACK FROM WHEN WE FILED THE SUIT, TILL TODAY, THAT WOULD BE \$23 IN INTEREST THEREON.

WE HAVE NOT GOTTEN TO THE ISSUE YET OF DAMAGES, BUT HE WOULD ALSO BE ENTITLED TO RECOMPENSE FOR THE DAMAGES THAT [12] HAVE BEEN DONE TO HIS FIRST AMENDMENT RIGHTS.

THE COURT: WHAT DO YOU THINK THAT IS?

MR. KRAFT: THAT IS A VERY DIFFICULT QUESTION TO QUANTIFY. BUT I BELIEVE THAT THE COURT COULD QUANTIFY THAT BY VIEWING THEM AS BEING IN THE NATURE OF DAMAGES THAT PLAINTIFF WOULD NORMALLY GET IN A CONVERSION SITUATION.

SECONDLY, MR. GIBSON TESTIFIED IN THE ORIGINAL CASE THAT HE HAD EXPENDED HIS OWN MONIES OF PROPOSITION ONE, TO THE EXTENT THE BAR CAME OUT AGAINST IT, THOSE EXPENDITURES WERE NEGATED.

WHENEVER YOU DEAL WITH UNLIQUIDATED DAMAGES, THERE IS CERTAINLY DISCRETION FOR THE COURT TO SET THOSE.

AND I BELIEVE THAT THE STARTING POINT, HOWEVER, IS WHAT HAS BEEN TAKEN FROM IT.

YOUR HONOR, WE SENT IN SEPTEMBER A REQUEST FOR PRELIMINARY INJUNCTION, BUT THE COURT HAS NOT RULED ON IT. AND GIVEN THAT, NOTHING HAS CHANGED. BUT THE EVIDENCE WHICH WE PRESENTED TO YOU SHOWS THAT THE BAR IS NOT FOLLOWING ITS OWN POLICY WHICH IS SUFFICIENT, AND HAS NOT PUT FORWARD A NEW POLICY WHICH IS SUFFICIENT.

I BELIEVE THAT PENDING THE COURT FASHIONING A REMEDY, THAT WE ARE ENTITLED TO PRELIMINARY INJUNCTION REQUIRING THE BAR TO CEASE LOBBYING UNTIL SUCH A TIME AS IT DOES ADOPT A CONSTITUTIONAL PROCEDURE.

* * * *

ORDER HOLDING CASE IN ABEYANCE
[R. 53, filed Mar. 13, 1987]

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

[Title & Clerk's filing stamp
omitted in printing]

The cause came before the Court on March 12, 1987 for a hearing on defendants' motion for judgment on the mandate. The Court will hold this matter in abeyance for 70 days to allow

for action by the Supreme Court of Florida on the Bar's proposal.

DONE AND ORDERED this 13th day of March, 1987.

/s/ Maurice M. Paul
United States District Judge

**MEMORANDUM RE STATUS OF AMENDMENTS
TO BAR POLICY
[R. 55, filed Apr. 1, 1987]**

IN THE UNITED STATES DISTRICT COURT OF THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

[Title omitted in printing]

At the hearing on March 12, 1987, the Court requested an estimate of the amount of time it would take for the Bar to obtain approval of the Florida Supreme Court of amended procedures under Standing Board Policy 900. The general counsel for the Bar estimated it would take 60 days and, in its order of March 13, 1987, the Court held the matter in abeyance for 70 days to allow action by the Florida Supreme Court on the Bar's proposal.

The Bar has taken the following steps since the hearing.

1. Standing Board Policy 900 was amended by the Board of Governors as attested to by the Affidavit of John F. Harkness, Jr. attached hereto as Exhibit A. The amendments are attached hereto as Exhibit B. Subsequent to the March 12 hearing it was determined that Supreme Court approval is not required for an amendment to Standing Board Policy 900. The amendment is now in effect and controls use of compulsory Bar dues for legislative purposes.

2. The Bar has also begun the process of amending its Bylaws to incorporate the new procedure. Amendments to the Bylaws do require submission to the Florida Supreme Court which has the authority to approve, modify or reject amendments pursuant to Rule 1-11.4 of the Rules Regulating The Florida Bar. A synopsis of the procedures and notice requirements for amendments to the Bylaws is attached hereto as Exhibit C. Those procedures and notice requirements are such that final approval by the Florida Supreme Court cannot take place until July 21 at the earliest or August 25 at the latest, depending upon whether or not objections are received from members of the Bar.

3. The Bar can ask the Supreme Court to adopt an expedited procedure for review of the Bylaws pursuant to Rule 1-11.4 of the Rules Regulating The Florida Bar. However, this would shorten the time provided for notice and response by members of the Bar. In light of the concern of the Plaintiffs that members of the Bar have an opportunity to be heard regarding changes in policy, and in consideration of the fact that the new procedure has already been adopted and is in force, it does not appear to be reasonable to seek an expedited procedure. Nevertheless, the Bar is prepared to do so if this Court so desires.

[Signature block, proof of service,
& Exhibits omitted in printing]

**RENEWAL OF MOTION FOR PRELIMINARY
INJUNCTION; RESPONSE TO "MEMORANDUM RE
STATUS OF AMENDMENTS TO BAR POLICY"
[R. 56, filed Apr. 20, 1987]**

IN THE UNITED STATES DISTRICT COURT OF THE
NORTHERN DISTRICT OF FLORIDA

[Title omitted in printing]

THE PLAINTIFF, ROBERT E. GIBSON, by counsel,
respectfully represents:

* * * *

3. For the reasons stated in the Memorandum of Law below, this Court should enter a preliminary injunction requiring the BAR to:

(a) Implement "positive checkoff," whereby attorney's would be permitted to include above basic dues (see point "b") any amount they desire for lobbying;

(b) Provide an audited accounting, based upon the prior year, of the amount spent upon non-lobbying;

(c) Provide an impartial arbitration panel for handling disputes regarding the allocation between non-lobbying activities and lobbying activities;

(d) Place a prominent disclaimer noting that its position is only that of non-dissenting members of the BAR;

(e) Requiring adequate notice of BAR committee and executive meetings at which legislative positions may be taken.

* * * *

CONCLUSION

5. The BAR has refused to petition the Florida Courts as it was directly ordered to do by this Court. No further delay should be countenanced and this Court should now enter an Order giving at least interim (if not final relief) to GIBSON. There would still remain the element of damages to be resolved which will require an evidentiary hearing.

* * * *

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omitted in printing]

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ORDER CONTINUING STAY [R. 57, filed May 7, 1987]

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

[Title & Clerk's filing stamp
omitted in printing]

By order dated March 13, 1987 (doc. 53), this Court ordered that this cause be held in abeyance for 70 days to allow for action by the Supreme Court of Florida on the Bar's proposal. On April 1, 1987, defendants notified the Court of the steps taken since then (doc. 55). The Board of Governors has amended Standing Board Policy 900. The amendment is now in effect and controls use of compulsory Bar dues for legislative purposes. The Bar has also begun the process of amending its Bylaws to incorporate the new procedure. Such an amendment requires approval of the Florida Supreme Court. Defendants represent that final approval cannot take place until July 21 or August 25, depending upon whether or not objections are received. Finally, defendants note that the Florida Supreme Court could be asked to adopt an expedited procedure for review of the Bylaws, but that this would shorten the time provided for notice and response by members of the Bar, Plaintiff responded to defendants' notice by renewing his motion for preliminary injunction (doc. 56).

At the March 12, 1987 hearing, the Court declined to rule on plaintiff's motion for a preliminary injunction and ordered that these proceedings be stayed for 70 days. At this time, the Court also declines to rule on plaintiff's renewed motion. In accordance

with the representations made in defendants' notice, and in order to insure final action by the Florida Supreme Court, the period during which this matter will be held in abeyance is hereby extended to September 1, 1987.

DONE AND ORDERED this 7th day of May, 1987.

/s/ Maurice M. Paul
United States District Judge

**RENEWAL OF MOTION FOR PRELIMINARY
INJUNCTION; MOTION FOR FINAL JUDGMENT
[R. 58, filed Oct. 22, 1987]**

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

[Title omitted in printing]

The Plaintiff, ROBERT E. GIBSON, by its counsel renews its previous Motions for preliminary injunctions, stating:

1. Reviewing the progress of this matter since the appeal's court rendered its decision:

- (a) Sept. 15, 1986 - Eleventh Circuit renders its opinion;
- (b) Sept. 23, 1986 - Plaintiff moves for Preliminary Relief;
- (c) Sept. 26, 1986 - Defendant replies to Motion;
- (d) Oct. 8, 1986 - Mandate issues;
- (e) Nov. 19, 1986 - Defendant moves for judgment on the mandate;
- (f) Dec. 4, 1986 - Plaintiff replies to Defendants' Motion for Judgment on the mandate;
- (g) Dec. 15, 1986 - Defendant files a further reply;
- (h) March 12, 1987 - Court holds hearing;

(i) March 13, 1987 - Court issues Order requiring the Bar to gain Supreme Court approval of its Board Policy within seventy days;

(j) April 17, 1986 - Plaintiff in response to Defendants' "Status Report" again renews its request for preliminary injunctive relief.

2. In the period of almost 14 months since the 11th Circuit ruled on this matter Plaintiff has requested preliminary relief on September 23, 1986, March 12, 1987, and April 7, 1986.

3. To date the Court has declined to rule.

4. The BAR has not met the most recent extended deadline to present for the Court's approval an Order of the Supreme Court implementing whatever relief the Bar sees fit to offer to this Court as protection of Plaintiff's rights.

5. There is no justification for further delay in ruling upon Plaintiff's Motions for Preliminary Injunction. The BAR has been given from March to September to formulate a plan, circulate it (so that the due process rights of the members of the BAR other than GIBSON are protected) for comment and to get final approval of the Florida Supreme Court. It has not been done so, and October is about to end. The BAR did not seek a further extension.

6. As GIBSON has noted in the legal memoranda, first amendment injuries are by definition irreparable. GIBSON has been suffering, and will continue to suffer damage to his rights by the continuation of unconstitutional acts by the Defendants. It is respectfully requested that GIBSON be granted both preliminary relief, and a final ruling thereafter.

[Signature block & proof of service
omitted in printing]

**DEFENDANTS' MEMORANDUM IN RESPONSE TO
PLAINTIFF'S RENEWAL OF MOTION FOR
PRELIMINARY INJUNCTION AND MOTION
FOR FINAL JUDGMENT
[R. 59, filed Oct. 30, 1987]**

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

[Title omitted in printing]

Defendant's, The Florida Bar and the members of the Board of Governors, respond to Plaintiff's Renewal of Motion for Preliminary Injunction and Motion for Final Judgment as follows:

On September 14, 1987, the Supreme Court of Florida heard oral argument from interested members of the Bar regarding the proposed amendment to the Bylaws of The Florida Bar. The Florida Bar is now awaiting an order from the Supreme Court in connection with the proposed Bylaws.

Pending a determination from the Florida Supreme Court on the Amendment to the Bylaws, the Bar placed into effect in March, 1987, the procedure which would be enacted by the amendment. The details of that new procedure has previously been filed with this Court. In accordance with the new procedure, legislative positions have now been published on two separate occasions. On the first series of legislative positions, 13 objections were received, of which one was withdrawn. On the second series of positions, only 7 objections were received and one of those objectors indicated that he did not desire to have any funds returned. Of the 18 objectors requesting a refund, the Bar elected to return to all of them the full pro rata amount of their dues attributable to legislative lobbying, plus interest.

The proposed amendments to the Bylaws were published in The Florida Bar News which is sent to all members of The Florida Bar. No objections were received from members of the

Bar to the proposed new procedure, with the exception of the objections by Tom Schwartz which were duly received by the Florida Supreme Court. The Plaintiff, Mr. Gibson, did not object to the proposed amendment to the Bylaws and has not objected to any legislative positions announced in the two series since the adoption of the new procedure.

Plaintiff has suggested no irreparable injury or any other ground which would justify the issuance of a preliminary injunction and it is clear from the facts cited above that no injury is being suffered by the Plaintiff or any other member of The Florida Bar during the pendency of this action.

[Signature block & proof of service
omitted in printing]

**ORDER FURTHER CONTINUING STAY
[R. 61, filed Nov. 10, 1987]**

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

[Title & Clerk's filing stamp
omitted in printing]

By order of this Court dated May 7, 1987, this case was held in abeyance until September 1, 1987 to allow for action by the Florida Supreme Court to amend the bylaws that are relevant to this cause. That date having passed with no action by the Supreme Court, plaintiff renews his motion for preliminary injunction (doc. 58).

Defendants' indicate that the Florida Supreme Court heard oral argument regarding the proposed amendment to the bylaws on September 14, 1987. The Bar is awaiting an order from the Supreme Court on the proposed bylaws. Accordingly, this Court

will continue to hold this cause in abeyance pending the order of the Florida Supreme Court. Defendants are ordered to provide this Court with a copy of the order of the Florida Supreme Court regarding the proposed bylaws within five (5) days of its issuance.

The Court WITHHOLDS RULING on plaintiff's renewed motion at this time.

DONE AND ORDERED this 10th day of November, 1987.

/s/ Maurice M. Paul
United States District Judge

—◇—

FLORIDA SUPREME COURT ORDER
[R. 62, filed June 2, 1988]

[526 So. 2d 688]

[Notice attaching Order
omitted in printing]

THE FLORIDA BAR RE AMENDMENT
TO RULE 2-9.3 (LEGISLATIVE
POLICIES).

No. 70990.

Supreme Court of Florida.

June 2, 1988.

PER CURIAM.

The issue in this case is whether we should permit a proposed amendment to rule 2-9.3, legislative policies, Rules Regulating the Florida Bar, to become effective. This amendment sets forth a procedure and potential remedy for bar members who question the propriety of the use of bar dues to support legislative positions approved by the bar's board of governors. The proposal was made, in part at least, as the result of litigation brought by a member of The Florida Bar against the bar, in which he claimed that monies were impermissibly spent for certain lobbying activities. *See Gibson v. The Florida Bar*, 798 F.2d 1564 (11th Cir.1986).

We heartily approve rule 2-9.3(b) which requires The Florida Bar to publish legislative policies adopted by the board of governors. We construe this to mean that the membership will be advised of what legislative programs the bar will be spending money on in its lobbying activities.

Nor do we find objectionable the remainder of the amendment, with certain qualifications. The amendment seemingly limits actions against The Florida Bar for its lobbying expenditures to the remedies prescribed in the rule. Although the pecuniary recovery may be limited, members of the bar should still be able to bring injunctive actions seeking to prevent unauthorized bar activities and expenditures. The limited remedy of a partial dues refund is not adequate to bar access to the courts to challenge the appropriateness of the bar's lobbying activities. The only change we have made in the proposed amendment is to substitute "shall" for "may" in the last sentence of paragraph 2-9.3(e)(2).

With these qualifications we approve the amendment to rule 2-9.3 as attached hereto, effective immediately.

It is so ordered.

MCDONALD, C.J., and OVERTON, EHRLICH, SHAW,
BARKETT, GRIMES and KOGAN, J.J., concur.

[Amended Rule 2-9.3 omitted in printing -
reproduced in Petition Appendix A at 6a n.8]

—○—

**NOTICE OF FILING AND AFFIDAVIT
OF JOHN F. HARKNESS, JR.
[R. 66, filed Sept. 27, 1988]**

IN THE UNITED STATE DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

[Title omitted in printing]

Pursuant to this Court's Order on September 16, 1988, The Florida Bar files herewith an Affidavit of John F. Harkness, Jr., Executive Director of The Florida Bar, with attached compilation of legislative positions of The Florida Bar from November 2, 1984, until September 16, 1988.

The Bar reiterates its argument that the positions taken by the Bar are not relevant to this Court's determination of whether or not to approve the rules adopted by the Bar and approved by the Florida Supreme Court.

[Signature block & proof of service
omitted in filing]

AFFIDAVIT

I, JOHN F. HARKNESS, JR., as Executive Director of The Florida Bar, attest the following information is true and correct to the best of my knowledge and belief.

1. As executive director of The Florida Bar I am custodian of the official records of that organization.

2. The attached compilation of legislative positions reflects action taken by the Board of Governors or executive committee of The Florida Bar from November 2, 1984 to date, representing all official legislative positions of The Florida Bar since the trial date of Robert E. Gibson v. The Florida Bar, et al., through September 16, 1988.

[Signature block & jurat
omitted in printing]

1985-86 Legislative Program of The Florida Bar

PRIORITY LEGISLATION

*A. Support creation of a capital collateral representative office funded by the Florida legislature.

*B. Oppose removal of the admission and discipline of attorneys from the Supreme Court of Florida.

*C. Oppose a sales tax on attorneys' fees.

D. Oppose radical or unwarranted changes to the tort system which are inconsistent with the concept set forth in Appendix A.

*E. Oppose deletion of the single-subject requirement for constitutional amendments proposed through the citizen initiative process.

NONPRIORITY LEGISLATION

A. Support enactment of judicial trust fund legislation.

*B. Support creation of a statewide prosecution function.

*C. Support continuation or expansion of the Legislative Law Education Mini-Grants Program (FS 233.0615). Last year the Florida legislature appropriated \$190,000 for this program.

*D. Support expansion of the Judicial Clerkship Program under the State Court Administrator's office. Last year the legislature appropriated \$50,000. This year we are seeking an appropriation of \$100,000.

E. Support continuation of the PRIDE program for Florida's correctional facilities.

F. Support enactment of legislation creating the Office of Public Guardian, which may be established in each judicial circuit by that circuit's chief judge. This legislation was developed as a result of a compromise involving the Disability Law Committee of The Florida Bar and the Guardianship Law Committee of the Real Property, Probate and Trust Law Section of The Florida Bar.

* Position pages are enclosed with this summary.

APPENDIX A

The Florida Bar actively seeks solutions to the issues of tort reform which are sensitive to the diverse interests involved and with particular regard for the interests of the public. To this end, The Florida Bar states its legislative policy on these subissues.

Abolition of Joint and Several Liability

The Florida Bar generally supports the positions contained in the Reports of the Tort Litigation Review Commission and the Gunter Commission on this issue.

Cap or Abolition of General Damages

The Florida Bar generally supports the positions of the Tort Litigation Review Commission and Gunter Commission on this issue.

Limit or Schedule Attorneys' Fees

The Florida Bar opposes arbitrary and unreasonable limits on, or schedules of, attorneys fees. The Florida Bar continues its support of the positions of the Tort Litigation Review Commission and Gunter Commission on this issue.

Structured Payments

The Florida Bar opposes mandatory if applied to all cases. Structured payment verdicts are permitted under current law. Any legislation describing structured payments must protect a party's verdict and payment thereof.

Mandatory Bifurcation of Trial

The Florida Bar opposes arbitrary and mandatory bifurcation and supports the positions of the Tort Litigation Review Commission and Gunter Commission on this issue.

Punitive Damages

The Florida Bar continues its support of the positions of the Tort Litigation Review Commission and Gunter Commission. The Florida Bar supports requiring a prima facie showing before Plaintiff can amend complaint to plead punitive damages.

Jury Trials

The Florida Bar supports retaining jury trials for all citizens of Florida.

FS 768.56

The Florida Bar continues to support repeal and supports the positions of the Tort Litigation Review Commission and the Gunter Commission; both recommended repeal.

1986-87 Legislative Program of The Florida Bar
(Carry-over from Previous Session)

PRIORITY LEGISLATION

- A. Oppose removal of the admission and discipline of attorneys from the Supreme Court of Florida.
- B. Oppose a sales tax on attorneys' fees.
- C. Oppose radical or unwarranted changes to the tort system which are inconsistent with the concepts set forth in Appendix A.
- D. Oppose deletion of the single-subject requirement for constitutional amendments proposed through the citizen initiative process.

NONPRIORITY LEGISLATION

- A. Support enactment of judicial trust fund legislation.
- B. Support continuation or expansion of the Legislative Law Education Mini-Grants Program (F.S. 233.0615). Last year the Florida legislature appropriated \$199,997 for this program.
- C. Support expansion of the Judicial Clerkship Program under the State Court Administrator's office. Last year the legislature appropriated \$50,000. This year we are seeking an appropriation of \$100,000.

D. Support continuation of the PRIDE program for Florida's correctional facilities.

E. Support enactment of legislation creating the Office of Public Guardian, which may be established in each judicial circuit by that circuit's chief judge. This legislation was developed as a result of a compromise involving the Disability Law Committee of The Florida Bar and the Guardianship Law Committee of the Real Property, Probate and Trust Law Section of The Florida Bar.

- * F. Support passage of an amendment to F.S. 57.111 (Equal Access to Justice Act) which would expand the statute to include any citizen of the State of Florida who has an action initiated against him by a state agency.
- * G. Support passage of the Florida Law Endowment Act. This bill would create a quasi-governmental nonprofit corporation whose sole function would be to collect and distribute funds to local legal aid offices.
- * H. Support passage of an amendment to Florida's capital crimes statute to provide that a jury's recommendation of life imprisonment would be binding upon the judge.
- * I. Support an amendment to Article V, Section 11 of the Florida Constitution (1968) which would require all vacancies of trial court judgeships be filled through the judicial nomination commission process. All newly appointed judges will be subject to an election at the next general election after he or she has served at least one year.

FEDERAL LEGISLATION

- * A. Support legislation to permit expended lawyer participation in the voir dire process of selecting jurors in the federal district courts.

- * These positions were adopted by the Board between July, 1985 and January, 1986.

April 18, 1988

- 20. Mandatory IOTA--The Florida Bar opposes legislatively mandated participation in the Interest on Trust Accounts (IOTA) program.

April 20, 1988

- 21. The Florida Bar supports the following positions regarding tort law revision:

- a) Joint and Several Liability and Comparative Fault--"Pure" comparative fault should be retained as outlined in Hoffman v. Jones. The joint and several liability doctrine should be modified in accordance with the Uniform Comparative Fault Act (UCFA) principle that any uncollectible damages shall be reallocated among the other parties at fault, including a claimant at fault, according to their respective percentages of fault.
- b) Statutes of Limitations and Repose--At the present time there should be no change in existing statutes of limitations or repose.
- c) Strict Liability--As to product liability, the rule of law should be the common law, and these matters should be left to the courts to continue to strive for the proper balance on a case-by-case basis. Further, as to the Florida dog bite statute, the following changes should be enacted:
 - 1. Eliminate the provocation or aggravation defense as to any person under six years of age.
 - 2. Limit a dog owner's liability to a negligence standard if a valid "bad dog" sign has been posted.

- d) Limitations on Noneconomic Damages--No conditional or unconditional limitations should be imposed on noneconomic damages in tort cases.
- e) Periodic Payments and Structured Settlements--The \$250,000 threshold for periodic payments of future economic losses under §768.78, F. S., is an appropriate threshold amount and should not be modified by reducing the threshold to \$25,000 or to include noneconomic damages.
- f) Punitive Damages--The trial court, at the close of evidence, should determine whether a legal basis exists for the recovery of punitive damages, said determination to be made utilizing current case law. Once the court permits the issue of punitive damages to go to the jury, the jury should have discretion whether or not to award punitive damages and should determine the amount which should be awarded. To the extent that the 1986 Tort Reform and Insurance Act modifies these principles, it should be repealed.
- g) Collateral Source Rule--The collateral source offset rule should not be extended so as to eliminate subrogation.
- h) Itemization of Verdicts--No change should be made in the itemized verdict procedure concerning the award of future economic losses.
- i) Jury Instructions on Noneconomic Damages--Existing jury instructions are adequate and no further changes should be made.
- j) Limitations on Frivolous Claims and Defenses--Existing sanctions for frivolous complaints and defenses, as governed by §57.105, F.S., are sufficient, and The Florida Bar opposes adoption of provisions providing sanctions for frivolous claims and defenses similar to

those contained in Rule 11 of the Federal Rules of Civil Procedure.

- k) Limitations on Contingency Fees and Referral Fees--No change should be made in the current regulation of contingency fees as ordered by the Florida Supreme Court.
 - l) Prejudgment Interest--The Florida Bar opposes the concept of differential prejudgment interest.
 - m) Mandated Demand for Judgment--Existing law relating to offer and demand for judgment provide sufficient incentives to motivate early and thorough consideration of the strength and weakness of claims by both parties.
22. The Florida Bar supports a legislative appropriation of \$1.5 million for the benefit of the legal services corporations.

April 27, 1988

23. The Florida Bar supports authorizing a driver-data-base list to be used for the selection of jurors in conjunction with registered electors.



EMERGENCY MOTION FOR PRELIMINARY INJUNCTION
[R. 68, filed Apr. 3, 1989]

UNITED STATES DISTRICT COURT,
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

[Title omitted in printing]

The Motion of Robert E. GIBSON, by counsel, respectfully represents:

* * * *

2. Gibson's position, which has been articulated on several different occasions, is that the Bar's rules and regulations regarding lobbying are fatally defective because they are only a rebate scheme. The minimum constitutional requirement for the use of compulsory dues for lobbying is that the governmental agency seeking to use such dues must in good faith estimate the amount it will use for lobbying in advance of the collection of the dues, and offer an advance reduction in that amount. Further, a review by a neutral third party is also necessary if the amount of the set aside is challenged as sufficient by any dues payor.

In the U.S. Supreme Court cases that Gibson has relied upon, the Court has noted again and again that "A pure rebate approach is inadequate." Ellis vs. Railway Clerks, 466 U.S. 435 and Chicago Teacher's v. Hudson, 106 S.Ct. 1066 (1986).

* * * *

5. By definition, injuries to first amendment rights are irreparable.

6. Yet another Florida legislative session is about to begin, and the Bar has undertaken its usual campaign—with Gibson's money—to lobby.

7. Given the clarity of the law requiring that Gibson is entitled to the relief he requests on a preliminary basis pending the final ruling of this Court, and the irreparable nature of the continuing injury which is occurring to him, it is respectfully requested that the Court advance this matter to the top of its docket and issue an immediate ruling on Gibson's preliminary injunction Motions.

[Signature block & proof of
service omitted in printing]

NOTICE OF APPEAL
[R. 74, filed May 4, 1989]

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

[Title omitted in printing]

NOTICE IS HEREBY given that ROBERT E. GIBSON, Plaintiff above named, hereby appeals to the United States Court of Appeals for the Eleventh Circuit from the Final Judgment entered in this action on the 3rd day of May, 1989.

[Signature block & proof of service
omitted in printing]

ADDENDUM TO ANSWER BRIEF OF APPELLEES
[11th Cir., filed July 24, 1989]

• • • •

THE FLORIDA BAR JOURNAL/SEPTEMBER 1988 29

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Financial Organization

The Florida Bar's 1988-89 operating budget is \$12.8 million. Membership dues account for only 49%, or \$5.9 million, of that amount.

The additional \$5.9 million in revenues comes from nondues sources, generated by various Bar programs and member services such as: sale of commercial ad space in *The Florida Bar Journal* and *News*, sale of public information brochures, subscription to

the *Case Summary Service*, rental of exhibit space at Bar meetings, and through Florida Supreme Court orders directing disciplined lawyers to pay prosecution costs.

A breakdown of the 1988-89 General Fund budget reflects all Bar programs costs, including support services and overhead.

Under special guidelines, the Bar's legislative program is considered to be funded entirely from member dues. The legislative budget of \$320,247 divided by the July 1, 1988 members in good standing of 42,974 give a cost per member of the legislative program of \$7.45.

The Florida Bar was the first state bar association to implement a cost allocation system for its various programs and activities with all costs other than General Administration, Board and Officer, and Planning and Evaluation being allocated to the end users based on the best available measure of usage. With a watchful eye toward expenditures and efficiency, Bar leadership and staff have implemented the system to monitor program expenses carefully. Prior to final adoption by the Board of Governors, the proposed Florida Bar operating budget is printed in *The Florida Bar News*. In addition, members are provided an opportunity to comment on the proposed budget at statewide hearings held by the Bar's Budget Committee.

An audit of all Florida Bar finances is conducted at the end of each fiscal year by an independent auditing firm, under the supervision of the Audit Committee, and a report is published in *The Florida Bar News* for members' review.

1988-89 General Fund Budget Statistics

	Percentage of Total Budget	Percentage of Dues Support	Amount of Dues Dollar Support
Lawyer Regulation	30.7%	50.2%	\$ 70.28
UPL	1.8%	3.0%	\$ 4.20
CSF	<u>2.4%</u>	<u>4.0%</u>	<u>\$ 5.60</u>
	34.9%	57.2%	\$ 80.08
Journal & News	7.8%	0.9%	\$ 1.26
Public Information	4.8%	7.2%	\$ 10.08
Public Interest Programs	3.6%	4.9%	\$ 6.86
Meetings & Convention	4.2%	1.8%	\$ 2.52
Committees & Other Activities	5.1%	6.9%	\$ 9.66
Section Administration	4.0%	2.8%	\$ 3.92
CLE Programs	15.5%	-0-	-0-
Legal Publications	9.2%	-0-	-0-
Legislation	2.7%	4.5%	\$ 6.30
Administration	<u>8.2%</u>	<u>13.8%</u>	<u>\$ 19.32</u>
	100.0%	100.0%	\$140.00

* * * *

SECOND JUDGMENT OF THE
COURT OF APPEALS

[July 23, 1990]

United States Court of Appeals

FOR THE ELEVENTH CIRCUIT

No. 89-3388

TCA 84-7109-MMP

ROBERT E. GIBSON,

Plaintiff-Appellant,

versus

THE FLORIDA BAR and
Members of the BOARD OF
GOVERNORS,

Defendants-Appellees.

Appeal from the United States District Court for the
Northern District of Florida

Before TJOFLAT, Chief Judge, ANDERSON and CLARK,
Circuit Judges.

JUDGMENT

This cause came to be heard on the transcript of the record
from the United States District Court for the Northern District
of Florida, and was argued by counsel;

ON CONSIDERATION WHEREOF, it is now hereby ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby **AFFIRMED** in part and **REVERSED** in part;

IT IS FURTHER ORDERED that each party bear their own costs on appeal.

CLARK, Circuit Judge, dissented and filed an opinion.

Entered: July 23, 1990
For the Court: Miguel J. Cortez, Clerk

By: /s/ David Maland
Deputy Clerk

ISSUED AS MANDATE: OCT 19 1990